

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

WHEATSTRAW LLC, an Oregon  
limited liability company,

Plaintiff,

v.

LINDA-DARNELL MASON, TAMMY  
DELANEY, MICHAEL EDWARD  
DELANEY, and all others,

Defendants.

No. 08-1176-HU

FINDINGS AND  
RECOMMENDATION

MICHAEL-EDWARD and  
TAMMIE-MARIE [Family: Delaney]

Third Party Intervenors.

Gary K. Kahn  
Tiffany A. Elkins  
Reeves, Kahn & Hennessy  
P.O. Box 86100  
Portland, Oregon 97286  
Attorneys for plaintiff

Michael-Edward and Tammie-Marie  
P.O. Box 1804  
Fairview, Oregon 97024  
Pro se

1 HUBEL, Magistrate Judge:

2       This action was removed from the Circuit Court for the State  
3 of Oregon, County of Multnomah. It was brought as a forcible entry  
4 and detainer (FED). After a General Judgment was entered in favor  
5 of plaintiff Wheatstraw LLC (Wheatstraw) and against defendants,  
6 two of the defendants, the Delaneys, filed a Notice of Removal.  
7 Wheatstraw requests that the action be remanded to state court on  
8 the grounds that 1) the court lacks subject matter jurisdiction  
9 over the action; and 2) the Delaneys failed to obtain the consent  
10 of the other defendant, Linda-Darnell Mason, as required for  
11 removal. The motion to remand is granted.

12       The burden of establishing federal jurisdiction is on the  
13 party seeking removal, and the removal statute is strictly  
14 construed against removal jurisdiction. Prize Frize, Inc. v. Matrix  
15 (U.S.) Inc., 167 F.3d 1261, 1265 (9th Cir. 1999). A defendant may  
16 remove an action to federal court only if it could have been  
17 brought there originally. Caterpillar, Inc. v. Williams, 482 U.S.  
18 386, 392 (1987); Jackson v. Southern California Gas Co., 881 F.2d  
19 638, 641 (9th Cir. 1989). The presence or absence of federal  
20 question jurisdiction in a removal case is governed by the well  
21 pleaded complaint rule, which provides that federal jurisdiction  
22 exists only when a federal question is presented on the face of the  
23 plaintiff's properly pleaded complaint. Caterpillar, 482 U.S. at  
24 392; Balcorta v. Twentieth Century-Fox Film Corp., 208 F.3d 1102,  
25 1106 (9<sup>th</sup> Cir. 2000).

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1 The face of the removed complaint alleges that the landlord,  
2 Wheatstraw, is entitled to possession of property situated at 5126  
3 NE 21<sup>st</sup> Avenue, Portland, Oregon, pursuant to Or. Rev. Stat. §  
4 86.755(5). The complaint also states on its face that the plaintiff  
5 is a resident of Portland, Oregon and the defendants also reside in  
6 Portland, Oregon. Thus, this action could not have been brought  
7 originally in federal court because it does not present a federal  
8 question and the parties are not diverse.

9 Under 28 U.S.C. § 1446, all defendants must join or consent to  
10 the removal notice. Prize Frize, 167 F.3d at 1266; Parrino v. FHP,  
11 Inc., 146 F.3d 699, 703 (9<sup>th</sup> Cir. 1998). If all defendants do not  
12 join in removal, the removal notice is defective. Prize Frize, 167  
13 F.3d at 1266. There is no indication in the record that defendant  
14 Linda-Darnell Mason joined in or consented to the removal notice,  
15 which is signed only by defendants Tammie-Marie Delaney and  
16 Michael-Edward Delaney.

17 I recommend that the motion to remand (doc. # 6) be GRANTED.

#### 18 **Scheduling Order**

19 The above Findings and Recommendation will be referred to a  
20 United States District Judge for review. Objections, if any, are  
21 due November 25, 2008. If no objections are filed, review of the  
22 Findings and Recommendation will go under advisement on that date.  
23 If objections are filed, a response to the objections is due

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1 December 9, 2008, and the review of the Findings and Recommendation  
2 will go under advisement on that date.

3 Dated this 10th day of November, 2008.

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5 /s/ Dennis James Hubel  
6 Dennis James Hubel  
7 United States Magistrate Judge  
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